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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,520	10/26/2001	Jeremy Stein	AP33681--073103.0102	9931

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EXAMINER	
SHRESTHA, BIJENDRA K	
ART UNIT	**PAPER NUMBER**
3691	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/045,520	STEIN ET AL.	
	Examiner	Art Unit	
	Bijendra K. Shrestha	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-23 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 26 October 2001 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 02/23/2006.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Acknowledgement is made of applicant's claim for priority to Provisional Application 60/243,460 filed on 10/26/2000 under 35 U.S.C. 119(e).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-23 are provisionally rejected on the ground of nonstatutory double patenting over claims 1- 23 of copending Application No. 10/415,206. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: all the independent and depending claims are identical (with minor addition in claim 1 and claim 18 of the copending application).

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 18 and 19 are rejected under 35 U.S.C. 102 (b) as being unpatentable by Kaka (reference U in attached PTO-892).

5. As per claim 1, Kaka teaches a method for estimating cash flow at risk for a non-financial entity over a particular future time period, comprising:

receiving quarterly data associated with at least two of a plurality of non-financial entities (see Fig. 3; page 35, column 2, paragraph 2; where Kaka collect data from 15 British construction companies; Kaka also refer to prior art (Kenley, 1986) who studied variability of cash flow data from 26 commercial and industrial projects; data is collected for different period);

generating a plurality of data elements, each of said plurality of data elements

representing a portion of said quarterly data of an associated one of said at least two of said plurality of non-financial entities (see page 36, column 2, paragraph 4; Appendix I);

selecting one of said at least two of said plurality of non-financial entities (see page 35, column 2, paragraph 2); and

estimating said cash flow at risk for said selected one of said at least two of said plurality of non-financial entities based on at least two of said plurality of data elements (see abstract; where risk associated with construction contracting companies was incorporated in forecasting of cash flow).

6. As per claim 2, Kaka teaches claim 1 as described above. Kaka further teaches the method wherein each of said plurality of data elements includes:

an indication of a calendar quarter to which the data element pertains (see Fig. 1 and Fig. 2; Data is shown for each month which makes result more accurate; Examiner interprets for longer period projects, data could be collected quarterly); and

an indication of a year to which the data element pertains (The Examiner interprets the instant application can provide required year information from the monthly data).

7. As per claim 3, Kaka teaches claim 1 as described above. Kaka further teaches the method wherein each of said plurality of data elements includes:

an indication of earnings before interest, taxes, depreciation and amortization for said indicated calendar quarter of said indicated year of said associated one of said at least two of said plurality of non-financial entities (see Fig. 1 and Fig. 5; where earning

is indicated P (Overall Mark-up applied to Total Cost) in equation (1) in Page 39, column 2, paragraph 2);

an indication of assets for said indicated calendar quarter of said indicated year of said associated one of said at least two of said plurality of non-financial entities (see Fig. 2; where labor, plant, site overhead cost and material cost has been indicated) ; and

an indication of actual earnings before interest, taxes, depreciation and amortization per assets, said indication of actual earnings before interest, taxes, depreciation and amortization per assets calculated by dividing said indication of earnings before interest, taxes, depreciation and amortization for said indicated calendar quarter of said indicated year by said indication of assets for said indicated calendar quarter of said indicated year (see Fig. 5; where actual earning is indicated by Pm (Overall Markup applied to Cost of Measured Work equation (1) in Page 39, column 2, paragraph 2).

8. As per claim 18, Kaka teaches a computer system comprising:

means for receiving quarterly data associated with at least two of a plurality of non-financial entities (see page 36, column 2, paragraph 4; where Lotus 123 spreadsheet installed on IBM computer to receive and process data);

means for generating a plurality of data elements, each of said plurality of data elements representing a portion of said quarterly data of an associated one of said at least two of said plurality of non-financial entities; means for selecting one of said at

least two of said plurality of non-financial entities; and means for estimating said cash flow at risk for said selected one of said at least two of said plurality of non-financial entities based on at least two of said plurality of data elements (see page 41, column 2, paragraph 3).

9. As per claim 19, it is rejected with same rational as claim 3.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 4-8, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaka (reference U in attached PTO-892) view of Sandretto (reference A in attached PTO 892).

12. As per claim 4, Kaka teaches claim 1 as described above.

Kaka further teaches the method wherein each of said plurality of data elements comprises:

an indication of average income to assets for said indicated calendar quarter of said indicated year of said associated one of said at least two of said plurality of non-financial entities (see Fig. 4 and Fig. 5; where average earning is indicated by Pm (Overall Markup applied to Cost of Measured Work equation (1) in Page 39, column 2, paragraph 2);

an indication of an industry to which said associated one of said at least two of said plurality of non-financial entities belongs (see page 35, column 2, paragraph 2; where industry is construction companies);

an indication of cash flow volatility of said industry to which said associated one of said at least two of said plurality of non-financial entities belongs (see Fig. 5; page 43, column 1, paragraph 1);

Kaka does not teach an indication of annualized stock price volatility and indication of market capitalization during said indicated calendar quarter of said indicated year of said associated one of said at least two of said plurality of non-financial entities.

Sandretto teaches using different economic variables that affect assets risk and estimating cash flows using different economic variables such as industrial growth for firm producing industrial goods (see column 9, lines 56-60; column 10, lines 8-11, 19-43). Market capitalization and stock price volatility would be other economic variables if construction industry cited have issued share in the market.

Therefore, it would be prima facie obvious to one of ordinary skill in the art at the time the invention was made to add indication of annualized stock price volatility and indication of market capitalization during said indicated calendar quarter of said indicated year of said associated one of said at least two of said plurality of non-financial entities of Kaka because Sandretto teaches that to use different economic variables because it influences the cash flow (Sandretto, column 10, lines 29-32).

13. As per claim 5, Kaka in view of Sandretto teaches claim 4 as described above.

Kaka further teaches the method wherein each of said plurality of data elements includes

an indication of an earnings before interest, taxes, depreciation and amortization per asset forecast error for one quarter in the future for said associated one of said at least two of said plurality of non-financial entities (see page 36, column 2, paragraph 3; Figs 4 and 5; page 42, column 2, paragraph 3).

14. As per claim 6, Kaka in view of Sandretto teaches claim 5 as described above.

Kaka further teaches the method wherein

said indication of earnings before interest, taxes, depreciation and amortization for per asset forecast error for one quarter in the future is calculated by generating an earnings before interest, taxes, depreciation and amortization per asset forecast for one quarter in the future for said associated one of said at least two of said plurality of non-financial entities using linear regression, and subtracting said indication of earnings before interest, taxes, depreciation and amortization per asset forecast for one quarter in the future from said indication of actual earnings_before interest, taxes, depreciation and amortization per asset (see Fig. 4 and Fig. 5; page 42, column 1, paragraph 2; where EBITDA is calculated by statistically).

15. As per claim 7, Kaka in view of Sandretto teaches claim 4 as described above.

Kaka further teaches the method wherein each of said plurality of data elements includes

an indication of an earnings before interest, taxes, depreciation and amortization per asset forecast error for one year in the future for said associated one of said at least

two of said plurality of non-financial entities (see Fig. 4 and Fig. 5; Page 43, column 1, paragraph 1).

16. As per claim 8, Kaka teaches claim 7 as described above. Kaka further teaches the method wherein said indication of earnings before interest, taxes, depreciation and amortization for per asset forecast error for one year in the future is calculated by

generating an earnings before interest, taxes, depreciation and amortization per asset forecast for one year in the future for said associated one of said at least two of said plurality of non-financial entities using linear regression, and

subtracting said indication of earnings before interest, taxes, depreciation and amortization per asset forecast for one year in the future from said indication of actual earnings before interest, taxes, depreciation and amortization per asset (see Fig. 4 and Fig. 5; The Examiner interprets monthly forecast could be extended to one year in the future).

17. As per claim 20, it is rejected with same rational as claim 4.

18. As per claim 21, it is rejected with same rational as claim 5.

19. Claims 9- 17, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaka (reference U in attached PTO-892) view of Sandretto (reference A in attached PTO-892) further in view of Levin (reference V in attached PTO 892).

Levin teaches estimation in statistical forecasting which makes statement about error that will accompany the estimate and implement some control to avoid as much of the error as possible (Levin, page 320-331)

20. As per claim 9 and 14-17, Kaka in view of Sandretto teaches claim 8 as described above.

Kaka in view of Sandretto does not teach forecasting error estimation in statistical forecasting.

Levin teaches an interval estimate (one third of said plurality of data elements) that describe a range of values within which a population parameter is likely to lie (Levin, page 327-330). Consequently economic variables such as Market Capitalization, Average Income to Asset, Annualized Stock Price Volatility, Cash Flow Volatility of the Industry, and Industry has been applied to plurality of data element in that confidence level effecting the generation of cash flow.

Therefore, it would be prima facie obvious to one of ordinary skill in the art at the time the invention was made to describe a range of values within which a population parameter is likely to lie of Kaka in view of Sandretto because Levin teaches it will enable to estimate the range within which undesired population likely to lie (Levin, page 328).

21. As per claim 10-13, Kaka in view of Sandretto further in view of Levin teaches claim 9 as described above.

Kaka in view of Sandretto does not teach estimating forecasting error which describes the range within which undesired population likely to lie.

Levin teaches "t" distribution table that measures the chance the population parameters estimated will not be within the confidence level, lie outside of it (Levin, page 342-347).

Therefore, it would be prima facie obvious to one of ordinary skill in the art at the time the invention was made to include "t" distribution table that measures the chance the population parameters estimated will not be within the confidence level but lie outside of it of Kaka in view of Sandretto because Levin teaches it will enable to estimate the range within which undesired population likely to lie (Levin, page 328).

22. As per claim 22, it is rejected with same rational as claim 9.

23. As per claim 23, it is rejected with same rational as claim 11.

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. Applicant is required under 37 CFR 1.111(c) to consider references fully when responding to this action.

The following are pertinent to current invention, though not relied upon:

Eder (U.S. Pub No. 2002/0046143) teaches method of and system for evaluating cash flow and elements of a business enterprise

Garman (U.S. Patent No. 6,122,623) teaches method for controlling cash flow mapping in value at risk determination.

Hinkley, Jr. (U.S. Patent No. 6,138,102) teach system for preventing cash flow losses.

Hwee et al. (International Journal of Project management, received Nov. 20, 2000) teach model on cash flow forecasting and risk analysis for contracting firms.

Johnson et al. (U.S. Pub No. 2002/0049653) teach method and system for quantifying cash flow recovery and risk.

Peterson et al. (U.S. Patent No. 7,016,873) teach forecasting error and its 5% tail event.

Phillips et al. (U.S. Patent No. 7,072,863) teach forecasting using interpolation modeling.

Sandretto (U.S. Patent No. 5,812,988) teaches method and system for jointly estimating cash flows, simulated returns, risk measures and present values for plurality of assets.

Suh (U.S. Patent No. 6,330,545) teaches activity information system including generation of cash flows.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijendra K. Shrestha whose telephone number is (571)270-1374. The examiner can normally be reached on 7:00AM-4:30PM (Monday-Friday); 2nd Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BKS

ALEXANDER KALINOWSKI
SUPERVISORY PATENT EXAMINER